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Restoring an Invalid Distance Rule

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Restoring an Invalid Distance Rule

Reference Number: CTAS-362

When a county issues beer permits in violation of an established distance rule, the rule becomes invalid and it can no longer be used as a basis for denying other permits. Cox Oil Co., Inc. v. City of Lexington Beer Board, 2002 WL 31322533 (Tenn. Ct. App. 2002); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. Ap. 2002); Reagor v. Dyer County, 651 S.W.2d 700 (Tenn. 1983); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn 1978); Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn. 1976). Restoring an invalid distance rule is a difficult process which usually results in costly litigation, and the law on this subject is complex and confusing. To avoid problems, distance rules should be carefully enforced.

To restore an invalid distance rule, the county legislative body generally has two options. The first option is to rescind the existing distance rule and establish a less restrictive rule within which all issued beer permits would fall. A new distance rule could be established by measuring the shortest distance between an existing licensee and the nearest school, residence, church or other place of public gathering. This new rule could then be uniformly applied. Youngblood v. Rutherford County Beer Board, 707 S.W.2d 507 (Tenn. 1986); Attorney General Opinion U88-17 (2/18/88).

The second option is to pass a new resolution reinstating the distance rule, but in order to do this all permits that were issued in violation of the distance rule must be eliminated by revocation or some other method. Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. Ap. 2002). As a practical matter, this means that all invalidly issued permits must be revoked. However, permits that were issued in conformance with the distance rules in existence at the time they were issued are validly issued permits protected under T.C.A. § 57-5-109, and these permits cannot be revoked.

In theory the distance rule also may be restored by elimination of the discriminatorily issued permits through attrition. Attorney General Opinion 87-34 (3/6/87); see also Attorney General Opinion U91-51 (4/9/91). However, in practice this could be a lengthy process and the distance rule could be challenged and declared invalid if the county allows discriminatorily issued permits to remain in use while using the distance rule to deny other applications for permits. An earlier opinion of the Attorney General states that elimination through attrition is in the nature of a post facto amendment which does not cure an invalid distance ordinance. Attorney General Opinion 82-325 (6/24/82). See also City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn. 1978).

To complicate matters, courts occasionally find that permits issued invalidly cannot be revoked, usually in the context of detrimental reliance. In Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983), there had been a full hearing prior to the issuance of the permit, the applicant made it clear that he would not build if the permit was not issued, the permit was issued and the permit holder operated his business there for over 10 years. Under these circumstances the court found that the permit could not be revoked. In other cases courts have required issuance of permits even though they violate the existing distance rule. In Coffman v. Beer Board of City of Jellico, 1992 WL 122676 (Tenn. Ct. App. 1992), the court found that building a convenience mart in reliance on a city ordinance stating that the distance was to be measured along right-of-way was sufficient "detrimental reliance" to prohibit the beer board from refusing to issue a permit based on the Supreme Court's opinion that distance must be measured by the straight line method.

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